

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

**WRIT PETITION Nos.3428 of 2007, 5247 of 2006,
6180 of 2007 & 18108 of 2007**

COMMON ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This order will dispose of Writ Petition Nos.5247 of 2006, 3428 of 2007, 6180 of 2007 & 18108 of 2007.

2. We have heard Mr. B.Chandrasen Reddy and Mr. S.Dwarakanath, learned Senior Counsel for the petitioners. We have also heard Mr. Dominic Fernandes, learned counsel for respondent Nos.1 & 2 i.e., Customs and Central Excise.

3. We take up Writ Petition No.3428 of 2007 as the lead case.

4. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of notice dated 24.08.2006 issued by the Assistant Commissioner, Customs and Central Excise, Arrears Recovery Cell,

Hyderabad for recovery of excise dues payable by the erstwhile owner of the land and property M/s. Midwest Alloys Pvt. Limited and restraining the petitioner from alienating the land in any manner. Description of the land in question finds place in the above notice.

5. Case of the petitioner is that it is a proprietary concern engaged in the business of manufacture of saw-dust powder for mosquito coils. On being served with the impugned notice dated 24.08.2006, petitioner came to know that M/s. Midwest Alloys Pvt. Limited had a manufacturing plant in the said land prior to purchase of the land by the petitioner pursuant to allotment made by the Andhra Pradesh Industrial Infrastructure Corporation Limited. The excise dues were payable by the said M/s. Midwest Alloys Pvt. Limited.

6. M/s. Midwest Alloys Pvt. Limited had availed financial assistance from Andhra Pradesh State Financial Corporation but for default in repayment, Corporation seized the entire assets of M/s. Midwest Alloys Pvt. Limited

whereafter the said plot of land was allotted to the petitioner by duly executing conveyance deed.

7. Contending that the impugned notice is wholly unsustainable in law as excise duty payable by M/s. Midwest Alloys Pvt. Limited could not be fastened on to the petitioner, the present writ petition has been filed.

8. Respondent Nos.1 & 2 has filed counter affidavit.

9. In paragraph 8 of the counter affidavit, it is stated that M/s. Midwest Alloys Pvt. Limited is liable to pay an amount of Rs.2,15,476.00 towards central excise duty and penalty as per the order-in-original dated 15.02.1998 which was subsequently modified by the Customs Excise and Service Tax Appellate Tribunal (CESTAT) in appeal *vide* the order dated 15.03.1994. At the time of purchase of the said land by the petitioner through the Andhra Pradesh Industrial Infrastructure Corporation Limited, M/s. Midwest Alloys Pvt. Limited had neither paid the central excise duty nor the penalty. Accordingly, recovery action was initiated by the

excise authorities in terms of proviso to Section 11 of the Central Excise Act, 1944.

10. In the course of the hearing today, we find that issue raised in this batch of writ petitions has been answered by the Supreme Court in **Rana Girders Limited v. Union of India**¹. That was also a case where similar notice was challenged by the auction purchaser. The notice was issued to the auction purchaser because the borrower had failed to discharge the excise duty liability. Supreme Court considered two earlier decisions in **Macson Marbles (P) Ltd. v. Union of India**² as well as **Union of India v. SICOM Limited**³ and thereafter held as follows:

“21. A harmonious reading of the judgments in *Macson* and *SICOM* would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the

¹ (2013) 10 Supreme Court Cases 746

² (2008) 15 SCC 481

³ (2009) 2 SCC 121

statute, claiming “first charge for the purchaser”. As far as the Central Excise Act is concerned, there was no such specific provision as noticed in *SICOM* as well. The proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10-9-2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable insofar as present case is concerned. Accordingly, we thus, hold that insofar as legal position is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department.”

11. Supreme Court thereafter held that as far as dues of central excise are concerned, those are neither related to plant and machinery nor to the land and building. Thus, it did not arise out of the said properties. Dues of central excise became payable on the manufacturing of excisable items by the erstwhile owner. Therefore, the excise duties were in respect of those items which were produced and not the plant and machinery which were used for the purpose of manufacturing. It has been held as follows:

“23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the sale deed/agreement as well, to the effect that the properties in question are being sold free from all encumbrances. At the same time, there is also a stipulation that “all the statutory liabilities arising out of the land shall be borne by the purchaser in the sale deed” and “all the statutory liabilities arising out of the said properties shall be borne by the vendee and the vendor shall not be held responsible in the agreement of sale”. As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the sale deed as well as in the agreement for purchase of plant and machinery talk of statutory liabilities “arising out of the land” or statutory liabilities “arising out of the said properties” (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property, etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax, etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the

manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note of at all by the High Court.”

12. This decision has been followed by this Court in W.P.No.5340 of 2007, **Gopal Agarwal v. Commissioner of Customs and Central Excise, Hyderabad**, decided on 29.12.2014. While setting aside similar notice, this Court had however left it open to the excise authorities to take any other steps permissible in law for recovery of the arrears of excise duty.

13. That being the position and following the decision of the Supreme Court in **Rana Girders Limited** (supra) as well as of this Court in **Gopal Agarwal** (supra), impugned notices dated 24.08.2006 in W.P.No.3428 of 2007; dated 12.03.2006 in W.P.No.5247 of 2006; dated 07.03.2007 in W.P.No.6180 of 2007; and dated 14.03.2007 in W.P.No.18108 of 2007 are hereby set aside. However, it would be open to respondent Nos.1 & 2 to take such steps as may be

permissible in law for recovery of outstanding excise duty from M/s. Midwest Alloys Pvt. Limited.

14. Writ Petitions are accordingly allowed. No costs.

15. Miscellaneous applications pending, if any, in these Writ Appeals shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 15.11.2022
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